Janet S. Salyer 5846 W. Bobolink Drive Mentone, IN 46539

Re: Formal Complaint 06-FC-67; Alleged Violation of the Open Door Law by the

Town of Argos

Dear Ms. Salyer:

This is in response to your formal complaint alleging that the Town of Argos violated the Open Door Law by failing to post timely and adequate notice of an April 5 executive session.

## **BACKGROUND**

You allege in your formal complaint that the Town Council of Argos ("Council") did not post notice of its April 5, 2006 executive session at least 48 hours in advance of the meeting, and that the posted notice did not specify the purpose of the executive session. Specifically, you allege that a single notice of the April 5 meeting and executive session was posted outside the Clerk's office on April 4, 2006, the day before the meeting. Since filing your complaint, you indicated to me that you had requested a copy of the memoranda for the executive session, but in response to this request you have received only the notice or agenda for the April 5 executive session and open meeting.

I sent a copy of your complaint to the Clerk Treasurer of Argos, Pam Bishop. Ms. Bishop supplied me with a written response, which I enclose for your reference. In addition, Ms. Bishop has talked with me on the telephone regarding how she posts notice for the Council. Ms. Bishop disputes that notice of the April 5 executive session was posted only 24 hours in advance of the meeting. Ms. Bishop stated that she posted the notice outside her office door on Monday morning for the Wednesday, April 5 evening meeting. She also sends notice to the news media via e-mail. The newspaper printed the notice of the meeting in the Wednesday, April 5 edition of the paper.

In addition, Ms. Bishop stated that the purpose of the executive session was to meet with a member of the Marshall County Fair Board regarding property that the Town is trading with the Board. Nothing else was discussed.

You and Ms. Bishop sent me a copy of the notice for the April 5, 2006 Council meeting and executive session. The notice states that on Wednesday, April 5, 2006, "The Argos Town Council will meet in Executive Session at 7:00 p.m. pursuant to I.C. 5-14-1.5-6.1b(2b), Initiation of litigation or litigation that is either pending or has been threatened in writing." The notice does not recite the place where the Council would meet.

## **ANALYSIS**

Public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting shall be given at least 48 hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. Ind. Code 5-14-1.5-5(a). Public notice shall be given by the governing body by posting a copy of the notice at the principal office of the public agency holding the meeting or at the building where the meeting is to be held. IC 5-14-1.5-5(b). In addition, notice must be delivered to all news media that request notice by January 1 for the succeeding calendar year. IC 5-14-1.5-5(b)(2). Notice for executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under IC 5-14-1.5-6.1(b). IC 5-14-1.5-6.1(d).

All meetings of governing bodies shall be open to the public except as provided in IC 5-14-1.5-6.1(b). IC 5-14-1.5-3(a). A governing body may meet outside the public for certain purposes set out in IC 5-14-1.5-6.1(b). A meeting from which the public is excluded is called an executive session. *See* IC 5-14-1.5-2(f). Memoranda for an executive session are required to be kept as the meeting progresses, and are to be available within a reasonable period of time after the meeting for the purpose of informing the public of the governing body's proceedings. IC 5-14-1.5-4(b), (c).

With respect to the Council's April 5, 2006 executive session and meeting notice, the notice does not recite the place where the meeting was to be held. This omission was a violation of the Open Door Law. Ms. Bishop stated that this omission was an oversight and she will ensure it does not recur. However, the Town disputes that it failed to post notice 48 hours in advance. To the extent that this presents a question of fact, it is one that I cannot resolve. If the Council failed to post notice at least 48 hours in advance of the meeting, it failed to comply with the Open Door Law. If Ms. Bishop posted notice on Monday morning for a Wednesday evening meeting, the notice was posted at least 48 hours prior to the meeting.

Ms. Bishop described in her letter the discussion that took place in the April 5 executive session. It concerned property to be traded with the Marshall County Fair Board. This purpose is not the same as that stated in the posted notice, which states the purpose was for initiation of litigation or litigation that is either pending or has been threatened in writing. Stated another way, a discussion with the County Fair Board regarding trading property does not fall within the purpose stated in the notice. Therefore, the notice did not meet the requirements of the Open Door Law because it did not state the actual purpose of the meeting.

Moreover, the purpose stated in Ms. Bishop's letter does not appear to be one for which an executive session may be held. Under IC 5-14-1.5-6.1(b)(2)(D), an executive session may be held for discussion of strategy with respect to the purchase or lease of real property by the governing body up to the time of a contract or option to purchase or lease is executed by the parties. However, all such strategy discussions must be necessary for competitive or bargaining reasons and may not include competitive or bargaining adversaries. IC 5-14-1.5-6.1(b)(2). In order to justify meeting in executive session on April 5, the Council must have met to discuss strategy regarding the purchase of real property by the Council, and the session could not include

bargaining adversaries. Therefore, the April 5 executive session was not proper under IC 5-14-1.5-6.1(b).

Finally, you complain that you have not received a copy of the memoranda from the April 5 executive session. In response to your request, you state that Ms. Bishop supplied you with what appears to be the notice of the meeting. The documentation that you sent me is the meeting notice, not memoranda. The Town should give you a copy of the memoranda that were kept during the executive session of April 5, whether finalized or in draft form.

## **CONCLUSION**

For the foregoing reasons, it is my opinion that the Town of Argos violated the Open Door Law when it posted notice that omitted the place of the meeting, and that recited a purpose for the executive session that was not the actual purpose of the meeting. On the record before me, I do not believe that the Council could have met in executive session for the purpose given by the Town. I do not make any finding regarding whether the April 5 notice was posted timely.

Sincerely,

Karen Davis Public Access Counselor

cc: Pam Bishop